

SENATE BILL 3277

By Kelsey

AN ACT to amend Tennessee Code Annotated, Title 65,
Chapter 21, relative to pole attachments.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 65-21-105, is amended by deleting the section in its entirety and by substituting instead the following:

65-21-105.

(a) For the purposes of enhancing competitive communications services markets and encouraging deployment of broadband communications services to the citizens of this state, all municipally owned utilities operated pursuant to § 7-52-103, or any other public or private act, and all rural cooperatively owned utilities doing business pursuant to the authority of chapter 25 of this title, or title 48, chapter 53, collectively “the utilities”, shall allow telecommunication service providers, as defined by chapter 4, part 1 of this title and cable operators, as defined in § 602 of the Federal Cable Communications Policy Act of 1984, codified in 47 U.S.C. § 522, collectively the “attaching parties”, to make pole attachments, as defined by 47 U.S.C. § 224(a)(4), at just, reasonable and non-discriminatory rates, terms and conditions pursuant to negotiated or arbitrated agreements. Such pole attachments may be denied only where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, if those limitations cannot be remedied by rearranging, expanding, replacing or otherwise reengineering facilities at the cost, reasonable and actual, of the telecommunications service provider or cable operator requesting the pole attachment.

(b)

(1) Upon receiving a request for a pole attachment agreement, the utilities may negotiate and enter into a binding agreement with the requesting attaching parties.

(2) Any party negotiating an agreement under this section may, at any point in the negotiation, ask the Tennessee regulatory authority, “the authority”, to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

(3) During the period from the thirtieth to the ninetieth day, inclusive, after the date on which the utility receives a request for negotiation, the other party to the negotiation may petition the authority to arbitrate any open issues by filing a petition with supporting information, served on the other party, describing:

(A) The unresolved issues;

(B) The position of each of the parties with respect to those issues; and

(C) Any other issue discussed and resolved by the parties.

(4) The non-petitioning party to a negotiation pursuant to this section may respond to the other party’s petition and provide such additional information as it desires within fourteen (14) days of the date the authority receives the petition.

(5) The authority shall limit its consideration of any petition to the issues set forth in the petition and in the response, if any is filed. The authority may require the parties to provide any additional information necessary to reach a decision on the unresolved issues and, upon the unreasonable failure to provide such information in a timely manner by either party, the authority may proceed on the basis of the best information available to it from whatever source derived and shall resolve all issues properly presented for arbitration within one hundred

twenty (120) days from the date of its receipt of the petition. The authority shall have exclusive jurisdiction to resolve such disputes.

(6) The authority shall establish a procedural schedule which, unless otherwise agreed by the parties, is intended to resolve the action within a time period not to exceed one hundred twenty (120) days of the commencement of the action. The authority shall resolve any dispute identified in the pleadings consistent with the public interest and necessity so as to derive just, reasonable, and non-discriminatory rates, terms and conditions, taking into consideration and applying such other factors or evidence that may be presented by a party, including without limitation the rules and regulations applicable to attachments by each type of communications service provider under § 224 of the Federal Communications Act of 1934, codified in 47 U.S.C. § 224. The authority may charge the parties, on an equal basis, a reasonable amount as costs for conducting the mediation or arbitration.

(7) In the event an attaching party delivers written notice of its intent to renew its pole attachment agreement to a utility, the parties' respective rights and obligations under the existing agreement shall remain in full force and effect until the parties enter into a renewal or successor agreement by negotiation or arbitration as prescribed in this section.

(8) The authority shall make a copy of each agreement approved pursuant to this section available for public inspection and copying within ten (10) days following its execution by the parties.

(c)

(1) Nothing in this section shall be construed to rescind, impair or affect any contracts in effect before the effective date of this act, and shall only apply to contracts entered into, or renewed on or after the effective date of this act.

(2) This section does not constitute certification as defined by federal law and shall not apply to any pole attachment regulated by the Federal communications commission under § 224 of the Federal Communications Act of 1934, codified in 47 U.S.C. §224.

(3) At any time, upon its own complaint or the complaint or any interested party, the authority shall have authority and jurisdiction, after notice and a hearing, to enforce this section by appropriate order or rule.

SECTION 2. This act shall not be construed in any way to effect the application of § 7-59-316, as enacted by Chapter 932, § 17 of the Public Acts of 2008.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of the act are declared to be severable.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.